



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,218	09/26/2002	Steve S. Pretious	APP02-9	9417
25759	7590	04/27/2004	EXAMINER	
JOHN J. ELNITSKI, JR. 225 A SNOWBIRD LANE BELLEFONTE, PA 16823			WEINSTEIN, STEVEN L	
		ART UNIT	PAPER NUMBER	
		1761		

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/065,218	PRETIOUS, STEVE S.
	Examiner	Art Unit
	Steven L. Weinstein	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/26/02.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12 are rejected under 35USC 112, first paragraph, as containing subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention.

The claims recite the phrase "main soluble material" which is also used in the specification. This is presumably the main component of the stick. However, the specification is silent as to what this material is.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the Philadelphia Inquirer (6/25/96, p.Do1) or Rocky Mountain News (1/2/91, p.3F) or Pittsburgh Post – Gazette (4/3/94, p. G7) or St Petersburg Times (12/12/91, p. 9D) or Commercial Appeal (1/31/96, p.C1) or Capital Times (12/18/91, p.1C) or Record (Northern N.J., 1/23/91., 1/23/91, p. do1) or Baltimore Morning Sun (12/6/95, p.1G) or State (Columbia, 1/12/2000, p. D1).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 1761

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philadelphia Inquirer as further evidenced by Rocky Mountain News, Pittsburgh Post Gazette, St. Petersburg Times, Commercial Appeal, Capital Times, Record, Baltimore Morning Sun and State, further in view of Kinagawa (Jp 60-9500), Arbib (Fr 2644679), Parent et al (Fr 434,110), Kuhn (426,506), White (GB 368890), White (GB 370,006), and Laskey (1,566,329).

Philadelphia Inquirer, as further evidenced by the secondary art, clearly and unequivocally teach that soluble flavored, stir sticks or sticks capable of being used as a stirrer, are notoriously old in the art. As the art taken as a whole clearly teaches, edible, soluble sticks made of Cinnamon and peppermint are well known for their ability to be used as stirrers in edible beverages. Claims 3-12 differ from Philadelphia Inquirer, as further evidenced by the secondary art in the recitation that the undisclosed "main soluble material" encapsulates one or more additives which additives can be whitener and sweetener. As evidenced by Kinugawa, Arbib, Parent et al, Kuhn, the two White references and Laskey, it is also well established to provide foods and even materials that are common constituents of drinks and candy in composite form wherein one material encapsulates another. To modify Philadelphia Inquirer, as further evidenced by the secondary art, and provide composite products and the particular composite materials for their art recognized and applicants intended function would therefore have been obvious.

The remainder of the references cited on the USPTO 892 form are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/af
March 14, 2004

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER
4/16/04 (1761)